

EXHIBIT 3

Patricia Kay Morgan

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New York, NY

January 11, 2005

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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF MASSACHUSETTS

4 -----x

5 In Re: PHARMACEUTICAL)

)

6 INDUSTRY AVERAGE WHOLESAL) MDL No. 1456

)

7 PRICE LITIGATION) CIVIL ACTION NO.

) 01-CV-12257-PBS

8))

9 -----)

10 THIS DOCUMENT RELATES TO)

11 ALL ACTIONS)

12 -----x

13 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

14 IN AND FOR THE COUNTY OF MARICOPA

15 -----

16 ROBERT J. SWANSTON, Individually and)

17 on behalf of himself and all others)

18 Similarly situated,)

19))

20 Plaintiff,) Case No.

21 v.) CV2002-004988

)

22 TAP PHARMACEUTICAL PRODUCTS,) Vol. 1

23 INC., et al.,)

24))

25 Defendants.)

26 -----

27 VIDEOTAPED DEPOSITION OF PATRICIA KAY MORGAN

28 New York, New York

29 Tuesday, January 11, 2005

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1 to strike rambling responses. That's all.

2 MR. MORGENSTERN: No.

3 EXAMINATION BY

4 MR. MORGENSTERN:

5 Q. Okay. Ms. Morgan, my name is Saul
6 Morgenstern, I represent Novartis Pharmaceuticals
7 in this action. And I'll be asking you some
8 questions this morning followed by one or two of
9 the other defendants' lawyers. And we've tried
10 to organize ourselves so that we will not take
11 too much of your time.

12 MR. MORGENSTERN: And as I mentioned
13 in my letter earlier to you, Mr. Schulz,
14 that we will try to reserve some of that
15 time and then turn the witness over to the
16 plaintiffs so that if there are any
17 follow-up questions we have after their
18 examination, we'll have some time to do
19 that.

20 MR. SCHULZ: And we have no objection
21 to that as long as everyone else has agreed
22 and as long as any redirect is, you know,

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1 kept within the scope of the cross. As you
2 can see.

3 The other point I would just like to
4 make at the outset too is that Judge Saris
5 has instructed everyone not to repeat
6 information that's already been disclosed in
7 the Texas transcript and we'll expect you to
8 abide by that.

9 MR. MORGENSTERN: We're going to try.

10 BY MR. MORGENSTERN:

11 Q. Okay, Ms. Morgan, what is your
12 current position?

13 A. I'm the manager of product
14 knowledge-based services with First Data Bank.

15 Q. And have you held that position since
16 joining First Data Bank?

17 A. Yes, sir, I have.

18 Q. And what are your responsibilities in
19 that position?

20 A. I'm responsible for adding the
21 product level information to the database.

22 Q. What does that mean, product level

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1 information?

2 A. The information that relates to the
3 product itself. The NDC number; the product
4 name; the Rx OTC categories.

5 Q. When did you join First Data Bank?

6 A. April 1, 1999.

7 MR. MORGENSTERN: Can you mark this
8 Exhibit Morgan 001 for identification, please.

9 (Exhibit Morgan 001 for
10 identification, background summary of
11 Patricia Kay Morgan, two pages.)

12 Q. Ms. Morgan, I would like to give you
13 what we've marked as Exhibit Morgan 001 for
14 identification, that's Tab 1 in your binder.

15 MR. SOBOL: Do you have copies, Saul?

16 A. Yes. To try and save some time,
17 we've created this little summary of your
18 background based on prior testimony that we've
19 read, and I wonder if you could take a quick look
20 at it and tell us whether we've accurately
21 summarized your background, leading up to your
22 joining First Data Bank.

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1 (Witness reviews document.)

2 A. The sequence of the job
3 responsibilities is a little out of sync, but
4 okay.

5 Q. Okay. Thanks very much.

6 MR. MORGENSTERN: Would you mark this
7 as Exhibit Morgan 002 for identification, please.

8 (Exhibit Morgan 002 for identification,
9 document Bates-stamped FDB-AWP 028372-77,
10 entitled Profiles of First Date Bank.)

11 BY MR. MORGENSTERN:

12 Q. I show you what has been marked as
13 Exhibit Morgan 002 for identification and ask you
14 whether you've ever seen that before, please?

15 A. No, I have not.

16 Q. Does First Data Bank publish
17 documents like this called Profiles of First Data
18 Bank?

19 MR. SCHULZ: Today?

20 MR. MORGENSTERN: Today.

21 A. This is not within my area, so I
22 couldn't testify as to whether we published

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1 foundation. If you know.

2 A. We request the published price from
3 the manufacturer to the wholesaler.

4 Q. Great. You said there's a direct
5 price field?

6 A. Correct.

7 Q. What does that correspond to?

8 A. Direct price is for those companies
9 that sell direct. In addition to selling through
10 wholesalers, or for those that only sell direct
11 and do not sell through wholesalers.

12 Q. And where does the information for
13 that field come from?

14 A. It again is defined as the published
15 direct price from the manufacturer to
16 non-wholesale customers.

17 Q. So you get it from manufacturer price
18 lists?

19 A. Correct.

20 Q. Calculated WP, what does that refer
21 to?

22 A. It was a field that was in existence

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1 before I arrived. For all purposes now it
2 matches our Blue Book field.

3 Q. Okay. SWP, what does that refer to?

4 A. It's the suggested wholesale price,
5 and it's populated if the manufacturer suggests
6 an AWP.

7 Q. Some manufacturers include an AWP on
8 their price lists; is that correct?

9 A. A suggested AWP, yes.

10 Q. And that's where you put that into
11 what you call the SWP field?

12 A. That's correct.

13 Q. What is Blue Book price?

14 A. Blue Book is what's become synonymous
15 with AWP to many of our customers, so it is the
16 average wholesale price, so it's the price that
17 includes the markup after our wholesaler survey,
18 if the product's available through the
19 wholesaler.

20 Q. And what's the federal upper limit
21 price?

22 A. That is a number we populate that's

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1 supplied by CMS for multisource products.

2 Q. You get that directly from the
3 government?

4 A. That's correct.

5 Q. And the Medicare AWP?

6 A. I'm sorry, it's Medicaid.

7 Q. Or Medicaid, sorry.

8 A. AWP. That again is prices that were
9 provided to us by the Department of Justice.

10 Q. Now, in Exhibit Morgan 003, if you take a
11 look at the fourth full paragraph, the last sentence
12 says, "We also consider the manufacturer's
13 suggested wholesale price in our determination."

14 Does that refer to your determination
15 of Blue Book AWP?

16 A. Yes, sir.

17 Q. How is the manufacturer's suggested
18 wholesale price considered in that determination?
19 What role does it play?

20 A. Well, there are some manufacturers,
21 and we use the term manufacturers quite loosely,
22 we're actually talking about any supplier of data

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1 A. Correct.

2 Q. And that is consistent with the
3 AstraZeneca price announcement in Exhibit Morgan 023.
4 Correct?

5 A. Correct.

6 Q. That number is not in plaintiffs'
7 chart for Prilosec?

8 A. Correct.

9 Q. Now, if you go three lines up from
10 there in Exhibit Morgan 010, for Prilosec you have,
11 there's a column labeled BB PKG, that is the
12 First Data Bank Blue Book AWP, correct?

13 A. Correct.

14 Q. And that number for that date of
15 January 2002, \$6,621.67, correct?

16 A. Correct.

17 Q. And that corresponds to the AWP after
18 alliance number provided in paragraph 591 of
19 Exhibit Morgan 018 for Prilosec; is that correct?

20 A. That's correct.

21 Q. But that number does not appear
22 anywhere on the, for Prilosec anywhere on the

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1 AstraZeneca price list marked Exhibit Morgan 023.

2 Correct?

3 A. That's correct.

4 Q. So unlike 2001 the AWP -- the Blue
5 Book AWP for First Data Bank was different from
6 the suggested AWP for AstraZeneca's Prilosec. Is
7 that correct?

8 A. That's correct.

9 Q. And why was that?

10 MR. SOBOL: Objection to form.

11 Q. What accounted for the change from --

12 MR. KERN: Don't speculate. Lacks
13 foundation. Go ahead.

14 Q. -- the 20 percent -- assuming the
15 plaintiffs' chart is correct, the markup,
16 reported markup in the First Data Bank database
17 was 20 percent for 2001 but 25 percent in 2002?

18 A. I did not investigate this one, so I
19 have no reason to know why it changed.

20 Q. Did anybody at AstraZeneca tell you
21 to change it?

22 A. No, they did not.

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1 Q. Do you have any reason to believe
2 that it was changed for any reason other than
3 your usual practice of surveying wholesalers and
4 populating your database?

5 MR. SOBOL: Objection to form.

6 A. I have no reason to believe that it
7 would change otherwise.

8 Q. I would like to turn to the entries
9 on the plaintiffs' chart in paragraph 591 for
10 Aventis. It's the third entry for Allegra 60 mg.
11 100s.

12 In -- and I believe the entries for
13 Allegra on our extract from the First Data Bank
14 database are on page 1 and 2. Looking at
15 Exhibit Morgan 010, the -- seven lines up from the
16 bottom, the entry for Allegra 60MG tablets 100
17 count, it says WHN package. That would be in the
18 First Data Bank database the Aventis WAC; is that
19 correct?

20 A. Correct.

21 Q. And that is listed in that column as
22 \$98.63. Is that correct?

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1 A. That's correct.

2 Q. And that corresponds to the
3 WAC before alliance entry in the chart plaintiffs
4 have in paragraph 591 of Exhibit Morgan 018. Correct?

5 A. That's correct.

6 Q. Did Aventis provide suggested AWP's in
7 2001 to First Data Bank?

8 A. I would have to check the documents
9 to see.

10 Q. There are none reflected for Allegra
11 in the chart that we've extracted from the First
12 Data Bank database. If you look, we have only
13 WHN package and BB AWP prices. Does that suggest
14 to you -- or does that refresh your recollection
15 as to whether Aventis was providing a suggested
16 AWP?

17 A. Either that or you pull the data
18 bank, so it's one of those two potentials.

19 MR. SCHULZ: Could you just repeat
20 it?

21 A. Yes.

22 MR. SOBOL: Sorry. What page are you